

Creed
T. intercutting

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
GRAYS HARBOR COUNTY TO)
BRUCE M. FERGUSON)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
ATTORNEY GENERAL,)

Appellants,)

vs.)

GRAYS HARBOR COUNTY and)
BRUCE M. FERGUSON,)

Respondents.)

SHB No. 77

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

A formal hearing on the request for review was held before the Board in Lacey, Washington on June 8, 1973 where respondent, Ferguson, appeared pro se; Grays Harbor County was represented by Marley Young, its assistant director of Department of Public Works; appellants were represented by Robert V. Jensen, assistant attorney general, with W. A. Gissberg, a member of the Board, presiding. Other Board members present

were Messrs. Beswick, Sheehy and Woodward.

This timber cutting permit appeal is a case of first impression with the Board. We therefore take this opportunity of calling attention to a matter not raised by the parties. Is the commercial cutting of timber a "development" which is subject to the permit system of the Shorelines Management Act? We do not believe it to be and reach that conclusion by an examination of the definition of "development" as found in the Act. See RCW 90.58.030(3)(d). The Department of Ecology appears to agree. Its forest management practices guidelines are contained in WAC 173-16-060(3) but are preceded by the following statement:

" . . . It should be noted that there are several guidelines for certain activities which are not explicitly defined in the Shoreline Act as developments for which substantial development permits are not required (for example, the suggestion that a buffer of permanent vegetation be maintained along water bodies in agricultural areas). While such activities generally cannot be regulated through the permit system, it is intended that they be dealt with in the comprehensive master program in a manner consistent with policy and intent of the Shoreline Act. . . ."

No objection having been made by respondents based upon the foregoing, they are deemed to have waived the same.

Having considered the transcript of the proceedings and the exhibits, the Board makes these

FINDINGS OF FACT

I.

On April 19, 1973, following publication of due notice thereof, Grays Harbor County granted to Bruce M. Ferguson Company, a Permit for Shoreline Management Substantial Development to undertake the harvest of timber by the clear-cutting method.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

II.

A timely request for review of the Permit was filed with this Board on June 4, 1973 by appellants, Department of Ecology and the Attorney General.

III.

Cedar Creek is a small stream affected by the tide and is a tributary of the Copalis River which empties into the Pacific Ocean in Grays Harbor County, Washington.

IV.

Respondent, Bruce M. Ferguson, a consulting forester who qualifies as an expert by virtue of his education and experience, has a timber management contract with one Lamb, owner of the land for which the Shoreline Management Act Permit was issued. Mr. Lamb owns 240 acres of land of which 100 acres thereof, containing 3.2 million board feet is the subject of a timber sale to Weyerhaeuser Company. Six or seven acres, containing about 500 thousand board feet of timber is intersected by Cedar Creek and has been designated by the Department of Ecology as "wetlands." It is this small tract, hereinafter called "site," which is the subject of the clear-cutting permit.

V.

The site, approximately 1½ miles from the ocean, is of a flat contour, and is bordered on the West by a County road.

VI.

The timber on the site is Western Hemlock, 70 to 90 years old, and that which is North of the Creek is of a tall, clean stand; however, 40 percent of the timber South of the Creek is infested with Mistletoe

1 and therefore not as economically desirable for growing stock.

2 . VII.

3 Little, if any, erosion would result from clear-cutting the timber
4 but that method of cutting is one means of controlling Mistletoe. The
5 site has a high water table which tends to cause shallow root systems.

6 VIII.

7 It is common knowledge, of which we take notice, that Western
8 Hemlock is a shade-tolerant species and seeds naturally under an overstory
9 of other trees; that the silvicultural practice of selective logging, in
10 this instance, will not limit natural regeneration.

11 From which comes these

12 CONCLUSIONS

13 I.

14 No contention having been made to the contrary this Board has
15 jurisdiction of the parties and subject matter of this review.

16 II.

17 Cedar Creek, at the site, is a natural shoreline of statewide
18 significance, and, as such, RCW 90.58.150 there prohibits the cutting of
19 timber by clear-cutting (within 200 feet abutting landward of the ordinary
20 high water mark of Cedar Creek) unless selective cutting is ecologically
21 detrimental due to topography, soil conditions or silvicultural
22 practices necessary for regeneration.

23 III.

24 The subject topography, soil conditions or silvicultural practices
25 necessary for regeneration do not render selective logging ecologically
26 detrimental.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

IV.

The Permit granted by Grays Harbor County which allows clear-cutting of timber within 200 feet of Cedar Creek must be reversed. The legislative purpose of prohibiting such a clear-cutting timber harvesting method is to assure, except in limited circumstances, none of which are present in this case, the preservation of a 200 foot buffer strip of timber adjacent to shorelines of statewide significance. That salutary purpose results in preserving the water quality and aesthetic values of the adjacent waterway. Indeed, RCW 90.58.020 recognizes that " . . . the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible . . . "

From which follows this

ORDER

1. The granting of the Permit allowing clear-cutting is reversed within that area of the site which is within 200 feet abutting landward of the ordinary high water mark of Cedar Creek. The measurement of 200 feet shall begin at that point of the Creek bank where the first vegetation having an upland character is indicated in this case by the line of trees and brush bordering the marshy area adjacent to Cedar Creek. In that 200 foot strip, only selective commercial timber cutting may occur so that no more than 30 percent of the merchantable trees may be harvested in any ten year period of time.

2. In such area of selective cutting, the present Permit requirement of replanting seedlings may be and is stricken.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

3. In other respects, the Permit is approved and affirmed.
DONE at Lacey, Washington this 27th day of June, 1973.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Ralph A. Beswick
RALPH A. BESWICK, Member

W. A. Gissberg
W. A. GISSBERG, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

Tracy J. Owen
TRACY J. OWEN, Member

James T. Sheehy
JAMES T. SHEEHY, Member

FINDINGS OF FACT,
CONCLUSIONS AND ORDER